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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1954.
No. 32.
(Formerly October Term, 1953, No. 639.)

STATE OF CALIFORNIA, on Relation of Edmund G. Brown, Attorney General, and Robert C. Kirkwood, State Controller,
Plaintiff and Petitioner,

vs.

ST. LOUIS UNION TRUST COMPANY, a Corporation Organized Under the Laws of the State of Missouri,
Defendant and Respondent.

ON PETITION FOR WRIT OF CERTIORARI.

BRIEF

For the Respondent in Opposition.

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ON PETITION FOR WRIT OF CERTIORARI.

BRIEF

For the Respondent in Opposition.

OPINION BELOW.

The opinion of the St. Louis Court of Appeals of the State of Missouri appears in the printed record (R. 131-149) and is reported in 260 S. W. 2d 821. It has not as yet been reported in the official reports of the Courts of Appeals of the State of Missouri. The denial by the Supreme Court of Missouri of the Application for Transfer from St. Louis Court of Appeals to Supreme Court of Missouri appears in the printed record (R. 157) and is not officially reported.

JURISDICTION.

Petitioner asserts that jurisdiction of this Court arises out of Title 28, Sections 2101-4, U. S. Code, Rules 38 and 38½, Rules of the Supreme Court of the United States. We find no jurisdictional relevancy in the cited provisions. Under them, this Court would have no jurisdiction. The only provision of the U. S. Code under which this Court could possibly have jurisdiction is 28 U. S. C. 1257 (3).

STATEMENT.

The State of California, at the relation of Fred N. Houser, its then Attorney General, filed suit in the Circuit Court of the County of St. Louis, State of Missouri, seeking recovery of inheritance taxes allegedly assessed on behalf of the State of California during the course of administration of the Estate of Mary Agnes Rogers in that State and allegedly due and unpaid. The defendants named in the Missouri action were the St. Louis Union Trust Company, a Missouri corporation, as Trustee under a certain indenture of trust created by decedent, Mary Agnes Rogers, and other residents of Missouri named as beneficiaries in said indenture of trust, and Cemetery Association of Missouri (R. 1-24).

Decedent, Mary Agnes Rogers, was originally a resident of Missouri (R. 133-134). During her lifetime, on July 8, 1936, she created a revocable trust, whereunder she transferred to St. Louis Union Trust Company as Trustee certain intangible personalty, reserving the income to herself for life and providing for distribution to certain named beneficiaries at her death (R. 81-87). During her later years she lived in California, and died there on June 14, 1945 (R. 133-134).

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Her will was filed for probate in the Superior Court of Los Angeles County, California, and her estate was administered by the Public Administrator of that county (R. 134, 137). Petitioner alleged that during the course of probate proceedings inheritance taxes were assessed in California, which taxes were determined by including the value of the assets of the Missouri trust estate as well as the property located within California (R. 132). Petitioner also alleged that during the course of administration the Public Administrator used the assets physically within California to pay expenses of administration and a Federal Estate Tax, leaving unpaid inheritance taxes in the amount of $4,349.75 (R. 132).

During the course of probate administration in California, none of the defendants were within California or in any way personally subject to the jurisdiction of its Courts (R. 137). Respondent St. Louis Union Trust Company during such period was, and still is, a Missouri corporation not qualified to do or doing business in California, and none of the assets comprising the trust estate were located within California (R. 137).

The petitioner predicated its original complaint solely upon the judgment entered by the California Court (R. 2-8). During the trial it changed its theory; but it was not made clear what its new theory consisted of.

The Trial Court dismissed as to all the defendants, except respondent, and found in favor of petitioner and against respondent for the relief prayed in the petition (R. 108). Respondent appealed to the Supreme Court of Missouri, which Court transferred the cause to the St. Louis Court of Appeals (R. 120-128). The St. Louis Court of Appeals reversed the decision of the Circuit Court, on two bases: first, that California had not created a cause

of action for the assessment and collection of inheritance taxes cognizable in Missouri Court, and, second, that petitioner had failed to introduce sufficient competent evidence to support whatever cause of action it had (R. 131-149). The petitioner then filed a motion for rehearing, or in the alternative, for transfer to the Supreme Court of Missouri (R. 151-152), which motion was denied October 16, 1953 (R. 152). Thereafter, petitioner filed an application in the Supreme Court of Missouri for transfer of the case from the St. Louis Court of Appeals to the Supreme Court of Missouri (R. 154-156); which application was denied December 14, 1953 (R. 157).

QUESTIONS INVOLVED.

Petitioner, on pages 15 and 16 of its Petition for Writ of Certiorari, sets out questions which it conceives to be involved in this cause. A reading of these questions in the light of the facts and after reading the opinion of the St. Louis Court of Appeals discloses their inapplicability. The questions involved here are:

1. Where California has no settled construction of the nature of a cause of action created by its inheritance tax statutes, and other taxing statutes, does the construction that the cause of action is intransitory in nature by Missouri Courts present a Federal question?

2. Assuming that the Missouri Courts were incorrect in determining the nature of the cause of action created by the California inheritance tax laws and other taxing statutes, would such erroneous construction be a denial of full faith and credit to such California statutes by the Missouri Courts?

3. Can California Statutes confer or impose upon Missouri Courts a jurisdiction, a precise and detailed procedure, and a circumscribed method of assessing inheritance

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taxes, made indigenous to California by their very terminology, and entirely alien to the Missouri Code of Civil Procedure?

4. Since the Missouri Courts found that there was no competent evidence before the Missouri Courts from which they could have determined the amount of inheritance taxes allegedly due California, and the decision of the St. Louis Court of Appeals rests on this ground, among others, will this Court attempt to examine other grounds which might possibly involve Federal questions?

5. Where the petitioner in its Application for Transfer to the Supreme Court of Missouri did not raise any constitutional questions, especially the question of denial of full faith and credit to California statutes, and where, in its original and amended pleadings in the Trial Court, petitioner also failed to assert any specific federal rights or questions, will petitioner now be heard to assert such rights or raise such questions?

SUMMARY OF ARGUMENT.

California had created a complicated and precise system for the determination of inheritance taxes, involving special methods for giving notice, posting notices, appointment of an appraiser, report of the appraiser, etc., and providing that all such activity was to take place under the supervision and control of a specified California Court. Without amending these statutes in any wise, California passed a general statute purporting to give authority to the attorney general to sue in other states "to collect taxes legally due this state."

Without any settled construction by California Courts as to the nature of the cause of action so created, in the instant action the Missouri Courts determined that California had not created a transitory cause of action as to

inheritance taxes. This decision was made after a careful examination of the California statutes and the applicable California decisions. The St. Louis Court of Appeals found that the right created by the California inheritance tax laws "is inextricably bound up with a prescribed statutory remedy and that available only in California" (R. 144), consequently the cause of action was intransitory. This independent determination presents no federal question.

Respondent does not deny that California **could** have created a transitory cause of action whch would have been cognizable in the Courts of Missouri, but it does deny that California, at the time this case arose, had done so. But even that question, i. e., did California **attempt** to create a transitory cause of action, had not been determined by California Courts at the time this case arose, and has not been decided by such courts to this date.

In other words, the Missouri Courts have said in this case that California created a cause of action and limited the remedy to specially created machinery; that in so doing California did not have the power to invest the courts of Missouri with the same machinery, so necessary to the prescribed remedy, where the statutes of Missouri have not invested the Missouri courts with exactly the same machinery. Certain actions can be enforced only in certain courts, and are not subjects of general jurisdictional recognition.

The opinion of the St. Louis Court of Appeals fully considered and construed the California statutes here involved. By doing so it gave full faith and credit to them. Even if its conclusions were erroneous, such error would not constitute a denial of full faith and credit, and does not present a federal question.

But most decisively, the Missouri courts came to the decision in this case, among other things, on the premise

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that petitioner had failed to present sufficient competent evidence to support any cause of action. Under such circumstances, this Court will not seek out a federal question, even if there be one, for the purpose of obtaining jurisdiction to re-examine the action of the Missouri Courts. Since there is an adequate non-federal ground for the decision of the Missouri Courts, this Court will not inquire beyond the adequacy of that ground in order to examine a possible federal question.

Finally, the petitioner failed to raise any constitutional questions in its application for transfer to the Supreme Court of Missouri, nor did it assert any specific federal rights or questions in its original and amended pleadings in the trial court. The Missouri Supreme Court would not hear any question not so raised, and this court will not pass on any questions not properly preserved.

ARGUMENT.

I.

California Had Never Construed Its Own Inheritance Tax Statutes as Creating a Transitory Cause of Action; Therefore, the Construction That the Cause of Action Is Intransitory in Nature by Missouri Courts Presents No Federal Question.

In its opinion, the St. Louis Court of Appeals correctly decided that the cause of action created by California inheritance tax statutes (Chapter 658, California Enacted Statutes, 1943), and other statutes [especially Section 3671 (e), Calif. Enacted Statutes, 1937], was intransitory, and cognizable only in a particular California Court. What that Missouri Court did was to examine at length the applicable California statutes and endeavor to find decisions of California Courts interpreting those statutes. Having found no California decisions which in any way shed any light on the nature of the California cause of action, that Court proceeded to place its own construction on the California statutes, and to reach its own conclusions as to the nature of the California cause of action. The St. Louis Court of Appeals found in this regard (R. 145):

> "We find on reading the California statutes, that a remedy is prescribed, and that it must be pursued in a specifically designated California Court; not in any Court of any state, nor even in any Superior Court in California, but in a single Superior Court, namely, in 'the Superior Court which has acquired jurisdiction in probate of the estate of any decedent,' Section 14651, Rev. and Tax Code, or if there be no estate, the Superior Court in the county in which the decedent resided at the time of his death, Section 14652. By Section 14501, that specified Court appoints

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an inheritance tax appraiser, who has 'all the powers of a referee of the Superior Court.' Section 14502. He files his report in the Court, and the Clerk of the Superior Court gives notice 'by causing a notice to be posted at the Courthouse in the county where the Court holds its sessions,' etc. Section 14508. Ultimately, the Court enters its judgment or order fixing liability for the tax. It is needless to recite other provisions, showing that the statute prescribes a remedy in a specified California Court. . . ."

The St. Louis Court of Appeals was free to make its own determination as to just what was created by the California statutes, and its decision in this regard will not be disturbed by this Court. **Louisville & Nashville Railroad Company v. Melton**, 218 U. S. 36, 54 L. ed. 921, 30 S. Ct. 676; **Western Life Indemnity Co. v. Rupp**, 235 U. S. 261, 59 L. ed. 220, 35 S. Ct. 37; **Pennsylvania Fire Ins. Co. v. Gold Issue Mining & Milling Co.**, 243 U. S. 93, 61 L. ed. 610, 37 S. Ct. 344; **Glenn v. Garth**, 147 U. S. 360, 37 L. ed. 203, 13 S. Ct. 350; **Lloyd v. Matthews**, 155 U. S. 222, 39 L. ed. 128, 15 Sup. Ct. 70; **Finney v. Guy**, 189 U. S. 335, 47 L. ed. 839, 23 S. Ct. 558; **Allen v. Allegheny Co.**, 196 U. S. 458, 49 L. ed. 551, 25 S. Ct. 311; **Banholzer v. New York Life Ins. Co.**, 178 U. S. 402, 44 L. ed. 1124, 20 S. Ct. 972.

Petitioner argues, under Point I of its argument, that California law provides a transitory cause of action for the enforcement and collection of California inheritance taxes, and argues under Point II that it is the duty of this Court to examine the nature of the California remedy; and correct the St. Louis Court of Appeals if that court erred. Nowhere in its brief does petitioner cite any judicial authority of California courts, or of any other courts, determinative of whether or not the California cause of action was transitory or intransitory.

Nor does petitioner cite any authority for its proposal that this Court be burdened with determining whether or not the Missouri courts erred in construing California statutes. We are left with the assertion that the Missouri courts erred, and that is all. Mr. Chief Justice Fuller, speaking for the court in **Glenn v. Garth**, 147 U. S. 360, 369, 37 L. ed. 203, 206, 13 S. Ct. 350, disposed of a similar case:

> "This record may be searched in vain for any proof that, as matter of fact, the public acts of Virginia had, by law or usage in Virginia, any other effect than was given them in New York; nor can the contention of counsel, that the Virginia statutes should be construed according to their views, be treated as the equivalent of the express assertion of a right arising under the constitution or laws of the United States."

II.

There Is No Denial by Missouri Courts of Full Faith and Credit to the California Statutes Governing Inheritance Taxes, Even if the Construction of Those Statutes and the Conclusions Reached Were Incorrect.

The decision of the St. Louis Court of Appeals for the State of Missouri in construing and applying the California statutes governing inheritance taxes, even if erroneous, is not a denial of full faith and credit to those statutes. That court determined, inter alia (R. 146):

> "There is nothing in the **Inheritance Tax Statute** of California which indicates that the legislature intended to create a right on which the state could sue in a foreign state, instead of being confined to a remedy in a specified superior court of California. The statute under which the Attorney-General of California asserts power to sue is a general statute, part of the Political Code of California, when this suit

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was brought, as Section 3671 (e) thereof. It grants generally power to bring suit 'to collect taxes legally due this State,' without specific reference to inheritance taxes."

and further (R. 148):

"In summation, we find that the new type of procedure here ingeniously attempted by the plaintiff cannot be accepted because of the principle established above, that when statutory right and remedy are intertwined, as here, the prescribed remedy must be followed, and being limited by the statutory prescription to a local court, the remedy cannot be pursued extraterritorially. The claim for inheritance tax as created in California is not truly transitory (regardless of whether it might conceivably have been made so) but has been localized by the requirement of California court procedure and California judgment."

Petitioner asserts at length that such conclusions are erroneous, and urges "that such error constitutes a violation of California's rights under the United States Constitution" (Petitioner's Brief, p. 31).

Petitioner's argument must be positioned on the assumption that the full faith and credit clause of the Federal Constitution requires that the Courts of Missouri interpret the California statutes here involved in such fashion that this Court would approve the construction were it sitting as a part of the state judicial structure of Missouri. This would mean that this Court would assert a corrective hand in every instance in which a state court interpreted the statute of another state in a fashion deemed to the detriment of the party invoking the full faith and credit clause.

". . . If every time the courts of a state put a construction upon the statutes of another state, this

court may be required to determine whether that construction was or was not correct, upon the ground that if it were concluded that the construction was incorrect, it would follow that the state courts had refused to give full faith and credit to the statutes involved, our jurisdiction would be enlarged in a manner never heretofore believed to have been contemplated." **Glenn v. Garth**, 147 U. S. 360, 368, 37 L. Ed. 203, 206, 13 S. Ct. 350.

So also, where the affected party argued specifically, as does petitioner here, that the error of the state court had been demonstrated, and that this court should correct it, this court held:

> "It is earnestly argued that the court erred in its construction of the Illinois Statute. We do not pass upon this question, deeming it to be outside the limits of our jurisdiction; for it is settled that where, in a state court, the validity of an act of the legislature of another state is not in question, and the controversy turns merely upon its interpretation and construction, no question arises under the 'full faith and credit' clause of the Federal Constitution."
>
> **Western Life Indemnity Co. v. Rupp**, 235 U. S. 261, 275, 59 L. ed. 220, 225, 35 S. Ct. 37.

See also such cases as **Allen v. Alleghany Company**, 196 U. S. 458, 49 L. ed. 551, 25 S. Ct. 311; **Johnson v. New York Life Ins. Co.**, 187 U. S. 491, 47 L. ed. 273, 23 S. Ct. 194; **Lloyd v. Matthews**, 155 U. S. 222, 39 L. ed. 128, 15 S. Ct. Rep. 70; **Banholzer v. New York Life Ins. Co.**, 178 U. S. 402, 44 L. ed. 1124, 20 S. Ct. 972; **Finney v. Guy**, 189 U. S. 335, 47 L. ed. 839, 23 S. Ct. 558; **Grand Gulf R. & Bkg. Co. v. Marshall**, 53 U. S. 12 How. 165, 13 L. ed. 938; **Cook County v. Calumet & C. C. Canal & D. Co.**, 138 U. S. 635, 34 L. ed. 1110, 11 S. Ct. 435.

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III.

California Statutes Cannot Confer or Impose Upon Missouri Courts a Jurisdiction, a Precise and Detailed Procedure, and a Circumscribed Method of Assessing Inheritance Taxes, Entirely Alien to the Missouri Code of Civil Procedure.

California has imposed by statute inheritance taxes, and has provided a statutory means for the assessment and collection of such taxes. It has therefore created a right and provided a remedy for the enforcement of that right. This right and its concomitant remedy are certainly novel in the sense that they are wholly unknown to the common law, and are also novel in the sense that no court of general jurisdiction in the State of Missouri has the powers given by the California statutes to California courts.

Section 14501, California Enacted Statutes, 1943, provides that a specific California court shall "designate and appoint an inheritance tax appraiser to ascertain and submit a report to the court on the following:

(a) The clear market value of the property included in each transfer subject to this part from the decedent to any person sharing in the estate, whether the property transferred is in the estate or not.

(b) The amount of tax, if any, which is due and payable on each transfer.

(c) Such other facts regarding the tax as will assist the court in the determination of the tax."

Section 14502 gives such appraiser "all the powers of a referee of the Superior Court." Section 14506 provides that the appraiser file a written report with the Superior Court, setting forth the items specified in Section 14501. Section 14508 requires the clerk of the Superior Court to give

notice "by causing a notice to be posted at the courthouse in the county where the court holds its sessions, and shall mail a copy of the notice to the Controller and to each person chargeable with any tax in the report **who has appeared in the probate proceeding.**" (Emphasis ours.) Sections 14509 and 14511, respectively, provide for confirmation of the report and for hearing of objections, if such are filed. There is even a provision whereunder the Controller may make rules and regulations relating to administration of the Inheritance Tax Department.

The St. Louis Court of Appeals found that petitioner conceded that Missouri courts could not follow California statutory procedure:

> "Plaintiff also disclaims that this is a suit of the second type, saying in its brief (p. 6) 'there is obviously no Missouri statutory machinery for determining California inheritance tax,' and (p. 3) 'the courts of Missouri have no facilities for following the procedural requirements of the California inheritance tax law.' It is conceded further in plaintiff's brief that the trial court 'did not and could not repeat here all the procedures followed by the California court in complying with the California statutory receipe for an inheritance tax determination'" (R. 142, 143).

An analogous situation occurred in **Slater v. Mexican National Railroad Company**, 194 U. S. 120, 128, 48 L. ed. 900, 903, 24 S. Ct. 581. In this case the Mexican statutes created a cause of action for wrongful death which provided that the responsibility of the tort-feasor included, besides the expenses of medical attention and burial and damages to the property of the deceased, the expenses of the support not only of the widow, descendants and ascendants of the deceased who were being supported by him but also to his posthumous descendants. The court held:

"The present action is a suit at common law, and the court has no power to make a decree of this kind contemplated by the Mexican statutes. What the Circuit Court did was to disregard the principles of the Mexican statute altogether and to follow the Texas statute. This clearly was wrong and was excepted to specifically . . . Evidently the Texas courts would deem the dissimilarities between the local law and that of Mexico too great to permit an action in the Texas state courts . . ."

The Missouri courts found that the prescribed remedy provided by the California statutes prevented Missouri courts from entertaining the action. The St. Louis Court of Appeals said:

"Thus, we have a situation where a right (to levy an inheritance tax) is inextricably bound up with a prescribed statutory remedy available only in California. When a legislature so ties together a right and a remedy it is impossible for courts of any other state to exercise jurisdiction" (R. 144).

The situation in the Slater case is certainly comparable to the situation in the instant case and the conclusion of Mr. Justice Holmes is apropos. The type of cause of action presently before the court can best be described by the language of this Court in **Pollard v. Bailey,** 87 U. S. 20 Wall. 520, 526, 22 L. ed. 376, 378:

". . . The liability and the remedy were created by the same statute. This being so, the remedy provided is exclusive of all others. A general liability created by statute without a remedy may be enforced by an appropriate common law action. But where the provision for the liability is coupled with a provision for a special remedy, that remedy, and that alone must be employed."

See also such cases as **Tennessee Coal, Iron & Railroad Co. v. George**, 233 U. S. 354, 58 L. ed. 997, 34 S. Ct. 587; **Galveston H. & S. A. R. Co. v. Wallace**, 223 U. S. 481, 56 L. ed. 516, 32 S. Ct. 205; **Stewart v. B. & O. R. Co.**, 168 U. S. 445, 42 L. ed. 537, 18 S. Ct. 105; **Fourth National Bank v. Francklyn**, 120 U. S. 747, 30 L. ed. 825, 7 S. Ct. 757; and a recent discussion of these and other related cases in **Davis v. P. E. Harris & Co.**, 25 Wash. 2d 664, 171 P. 2d 1016.

The argument which petitioner is making was also made by the State of Colorado in a case quite similar to the instant case. The New York Court of Appeals answered the argument by holding:

> "The Court must read the Colorado statute as it is written. It imposes a special burden upon the right of succession to secure public revenue for governmental purposes. Brown v. Elder, 32 Colo. 527, 77 Pac. 853; Macky's Estate, 46 Colo. 79, 102 Pac. 1075. Not only must the transfer tax be assessed in accordance with the statute, but the method of collection provided by law must be followed. A fair and reasonable construction of the statute in consonancy with the legislative intention does not permit its enlargement to reach those who assert their freedom from liability under the due process clause of the United States Constitution. The only intent of the legislature that the court can discern is that the tax should be collected in accordance with the statute, not otherwise. Matter of Gould, 156 N. Y. 423, 425, 51 N. E. 287. **Irregular assessments and unauthorized methods of collection may not be justified by pointing out difficulties in the practical application of the statute as written and appealing to the moral sense to meet the objection that no legal liability has been established against the beneficiaries. No substitute for the statutory method of collecting taxes, as such method is**

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expressed or fairly implied, may be invoked either in the State of Colorado or elsewhere." (Emphasis ours.) **State of Colorado v. Harbeck,** 232 N. Y. 71, 81, 133 N. E. 357, 358.

This is not a situation wherein the courts of Missouri are arbitrarily refusing to recognize and enforce a cause of action arising under the laws of one state while recognizing and enforcing a comparable cause of action arising under the laws of another. Nor is this a situation where the courts of Missouri are arbitrarily refusing to recognize and enforce a cause of action arising under the laws of another state while recognizing a comparable cause of action arising under its own laws. Nor is this a situation where Missouri is refusing access to its courts on the grounds of public policy, nor a situation wherein a state has created a transitory cause of action and attempted to restrict its enforcement to its own courts. But, it will be argued, this is a situation wherein both California and Missouri have created comparable causes of action, for both have somewhat comparable inheritance tax statutes. While this is true, it serves to illustrate the point at hand, for Missouri also requires that inheritance taxes be determined in a particular way, by particular procedures, under the supervision of a special Missouri court of limited jurisdiction. Chapter 145, R. S. Mo., 1949.

California has provided nothing in its inheritance tax statutes that would permit a Missouri court of general jurisdiction to hear and determine the same.

IV.

Inasmuch as the Decision of the St. Louis Court of Appeals Rests on the Ground, Among Others, That There Was No Competent Evidence Before the Missouri Courts From Which They Could Have Determined the Amount of Inheritance Taxes Allegedly Due California, This Court Will Not Attempt to Examine Other Grounds Which Might Possibly Involve Federal Questions.

At the trial of this cause petitioner made no effort to have the Missouri Court determine any of the facts necessary for the determination of the California inheritance tax, and the only question of fact actually litigated was that of domicile of the decedent, Mary Agnes Rogers. To support its allegations as to the assets of the estate, the beneficiaries thereof and their relationship to decedent, the interest and the value thereof received by each beneficiary, the expenditures made on behalf of the state by the California Administrator, and such other facts as were necessary for the determination of the California interitance tax, petitioner, in the words of the St. Louis Court of Appeals:

> ". . . offered in evidence as its chief reliance in this case the June 24, 1947, judgment of its Superior Court (by a 'Court Commissioner' whose status and authority are not established in this record, but that issue is not before us) approving and confirming the report of its inheritance tax appraiser, finding that the market value of the property subject to inheritance tax is $98,152.27 and assessing and fixing the liabilities of named heirs (Exh. A); and the account and report of its public administrator and petition for discharge, nothing for distribution, with order of August 9, 1948, approving said account and granting said petition (Exh. B). Parenthetically, it might be noted

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that although a copy of the Report of the Inheritance Tax Appraiser was attached to the petition as an exhibit, no authenticated copy of same was ever offered in evidence. However, some questions were asked concerning said report, whereby some of the contents thereof came into evidence.

"Without said Exhibit A and Exhibit B plaintiff would have been without evidence of the value of decedent's estate, especially her California assets and of the computation and assessment of inheritance tax . . ." (R. 143, 144).

It must be remembered that the court, in speaking as it did above, was answering the following question which it had put to itself:

"Thus, in effect, plaintiff contends that it here pursued, and was entitled to pursue a third procedure, viz., that it sued in Missouri to have defendant's liability for inheritance tax determined without relying on any prior California adjudication as a judgment, but using prior California court orders as evidence or proof of its case. May this be done?" (R. 143.)

Thus, the Court found that the respondent had failed to offer competent evidence in support of its cause of action. That it also concluded that the Courts of Missouri lacked the power to entertain the cause of action is immaterial, since the first ground is an adequate non-federal ground sufficient to support the decision.

In **Klinger v. Missouri,** 80 U. S. 257, 263, 20 L. ed. 635, 637, the court said:

"The rules which govern the action of this court in cases of this sort are well settled. Where it appears by the record that the judgment of the state court might have been based either upon a law which would

raise a question of repugnancy to the Constitution, laws or treaties of the United States, or upon some other independent ground, and it appears that the court did, in fact, base its judgment on such independent ground, and not on the law raising the Federal question, this court will not take jurisdiction of the case, even though it might think the position of the state court an unsound one. But where it does not appear on which of the two grounds the judgment was based, then, if the independent ground on which it might have been based was a good and valid one, sufficient of itself to sustain the judgment, this court will not assume jurisdiction of the case; but if such independent ground was not a good and valid one, it will be presumed that the state court based its judgment on the law raising the Federal question, and this court will then take jurisdiction. . . ."

See also such cases as **Smith v. Adsit**, 83 U. S. 16 Wall., 185, 21 L. ed. 310; **Eustis v. Bolles**, 150 U. S. 361, 37 L. ed. 1111, 14 S. Ct. 131; **Dibble v. Bellingham Bay Land Co.**, 163 U. S. 63, 41 L. ed. 72, 16 S. Ct. 939; **Moore v. Mississippi**, 88 U. S. 21 Wall., 636, 22 L. ed. 653; **Cuyahoga River Power Company v. Northern Realty Company**, 244 U. S. 300, 61 L. ed. 1153, 37 S. Ct. 643; **Allen v. Arguimbau**, 198 U. S. 149, 49 L. ed. 990, 25 S. Ct. 622; **Fox Film Corp. v. Muller**, 296 U. S. 207, 80 L. ed. 158, 56 S. Ct. 183; **Hale v. Akers**, 132 U. S. 554, 33 L. ed. 442, 10 S. Ct. 171, and **DeSaussure v. Gaillard**, 127 U. S. 216, 32 L. ed. 125, 8 S. Ct. 1053. Note especially such cases as **Lynch v. New York**, 293 U. S. 52, 79 L. ed. 191, 55 S. Ct. 16; **Buck v. California**, 343 U. S. 99, 96 L. ed. 775, 72 S. Ct. 502, and **Stembridge v. State of Georgia**, 343 U. S. 541, 96 L. ed. 1130, 72 S. Ct. 834.

The complete failure of admissible and competent evidence is demonstrated by the language of the Karp case,

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in which a comparable situation was considered by the Ohio Courts:

> "It seems to us that the amended petition in the case at bar discloses even more clearly that Minnesota had nothing within its borders upon which to exercise its power. The defendant at no time was a resident of the state. It is not alleged that he was ever in the state. No property was sequestered. The only suggested basis for the exercise of its sovereignty is that in 1940 he had received income from business transacted in Minnesota. Where or in what manner he received it is not shown. In this situation in 1944, the Commissioner of Taxation, an administrative officer, without personal service, assessed this tax which under the law was made prima facie evidence against the defendant. That, it seems to us, was an attempt by Minnesota to extend its sovereignty beyond its boundaries and control and bind the defendant. No such power resides in any state and an attempt to so extend its power is void and violates the XIVth Amendment to the Constitution of the United States. To give effect to such an attempt would deprive the defendant of property without due process of law.
>
> "We are of the opinion that the amended petition fails to show a cause of action enforceable in Ohio." **State of Minnesota v. Karp**, 84 Ohio App. 51, 60, 84 N. E. 2d 76, 80.

There being an adequate non-federal ground sufficient upon which to rest the decision of the St. Louis Court of Appeals, this Court will not assert jurisdiction merely to inquire whether there might also be involved a federal constitutional question.

V.

Petitioner Having Failed to Raise Any Constitutional Questions in Its Application for Transfer to the Supreme Court of Missouri, and Having Failed to Assert Any Specific Federal Rights or Questions in Its Original or Amended Pleadings in the Trial Court, Cannot Now Assert Such Rights or Raise Such Questions.

The petitioner did not assert the federal question, which it now raises, in its pleadings before the trial court; as a matter of fact, its pleadings seemed to be based upon the theory of giving full faith and credit to a final judgment of a California court, not seeking full faith and credit for statutes in California.

But, moreover, even if petitioner had raised a federal question, there, or later, it must preserve that question all the way up the line. An examination of petitioner's Application for Transfer to the Supreme Court of Missouri (R. 154-156) discloses that petitioner failed in any wise to call to the attention of the court any "claim of denial of full faith and credit to the statutes of California." In this final and necessary step before the state court the petitioner failed to raise or preserve the question which it now asserts before this court. Petitioner failed, as required by Missouri procedure, to call specific attention to the federal question which it now seeks to assert. Under the decided cases of Missouri, failure to specify the federal question precludes its consideration by the highest State Court. **City of St. Louis v. Butler Co.**, 358 Mo. 1221, 219 S. W. 2d 372. Under these circumstances, this Court will not consider any such question. **Bailey v. Anderson**, 326 U. S. 203, 90 L. ed. 3, 66 S. Ct. 66; **Herndon v. Georgia**, 295 U. S. 441, 79 L. ed. 1530, 55 S. Ct. 794; **John v. Paullin**, 231 U. S. 583, 58 L. ed. 381, 34 S. Ct. 178; **Parke v. Illinois**, 333 U. S. 571, 92 L. ed. 886, 68 S. Ct. 708.

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Discussion of Petitioner's Cases.

We shall now deviate briefly in order to examine some of the cases cited by petitioner in its brief, together with a few of the arguments made in connection therewith. **Tennessee Iron & Coal Company v. George**, 233 U. S. 354, 58 L. ed. 997, 34 S. Ct. 587, is cited by the petitioner on pages 24 and 25 of its petition and brief as is **Atchison, Topeka & Santa Fe Railroad v. Sowers**, 213 U. S. 55, 53 L. ed. 695, 29 S. Ct. 397, for the proposition that a transitory cause of action created by the laws of one state cannot be made intransitory by a clause attempting to limit its enforcement to the courts of the state of its creation. We have no quarrel with this proposition but think it inapplicable to the instant situation wherein a state failed to create a transitory cause of action originally. Such cases as these are adequately answered in Point III of this brief.

Nor have we any quarrel with the general proposition that all California statutes are entitled to full faith and credit as required by such cases as **Bradford Electric Company v. Clapper**, 286 U. S. 145, 76 L. ed. 1026, 52 S. Ct. 571 (Petitioner's Brief, p. 32). But as we have pointed out in Point I above, the mere construction of the California statutes is not a denial of full faith and credit to such statutes.

This case is not comparable to the facts of **First National Bank of Chicago v. United Air Lines**, 342 U. S. 396, 96 L. ed. 441, 72 S. Ct. 421 (Petitioner's Brief, p. 32), in which case action was brought in a Federal Court in Illinois on a wrongful death action arising under the Utah Wrongful Death Statute. Illinois had a statute which provided that such cases should not be maintained in Illinois if service could be obtained upon defendant at the place where death occurred. This Court held that the full faith and credit clause was violated since quite obviously Illinois recognized other wrongful death cases. In

the instant case the State of Missouri has not permitted any original action for the recovery of inheritance taxes in the courts of Missouri, nor any action comparable to a cause of action for inheritance taxes and there is, therefore, no question of Missouri recognizing a cause of action for inheritance taxes of one state while denying recognition to the cause of action created by California statutes.

Petitioner would have this Court believe that the case of **State ex rel. Oklahoma Tax Commissioner v. Rodgers et al.**, 238 Mo. App. 1115, 193 S. W. 2d 919, creates a comparable conflict. The Rodgers case came before the St. Louis Court of Appeals on an appeal from the order of the trial court sustaining a demurrer to the petition. That case laid down the rule that foreign tax laws are not penal laws and that it was not the public policy of Missouri to deny to other states access to Missouri courts for the purpose of enforcing revenue laws of such other states—and that is all the case held. In the Rodgers case, in view of the demurrer, it was admitted that Mr. and Mrs. Rodgers had been residents of Oklahoma during the tax years in question; that they filed tax returns while residents of Oklahoma; that under the laws of that state and by virtue of those tax returns so filed, they became indebted to the state in the amounts designated by the tax commission relying on the returns so filed; that Mr. and Mrs. Rodgers had moved out of the state without paying the taxes for which they were so indebted, and that the state was pursuing them in Missouri for the purpose of collecting this indebtedness. There was no question in the Rodgers case concerning the power and jurisdiction of Missouri courts to entertain the Oklahoma cause of action, nor was there any question as to the sufficiency of evidence in proof thereof before the court.

A case such as **Order of United Commercial Travelers of America v. Wolfe**, 331 U. S. 586, 91 L. ed. 1687, 67 S. Ct. 1355 (Petitioner's Brief, p. 33), has no applicability to the

instant case, inasmuch as the question before the Court therein was whether or not the full faith and credit clause required the Court of the Forum to give effect to a provision of the Constitution of the Society prohibiting the bringing of an action on a claim more than six months after the disallowance of the claim by the Supreme Executive Committee of the Society when that provision was valid under the law of the state in which the Society was incorporated, but when the time prescribed generally for commencing actions on contracts by the law of the Forum was six years and, further, the law of the Forum provided in effect that any provision in a contract limiting such statute of limitations was void. There plainly the law was clear and it was a question of choice of law, that is, whether the court of the Forum could apply its own statute of limitations or whether it was required to apply the clear law of the state creating the contract.

John Hancock Mutual Life Insurance Co. v. Yates, 299 U. S. 178, 182, 81 L. ed. 106, 108, 57 S. Ct. 129 (Petitioner's Brief, p. 33), is a case comparable to the Wolfe case. The question before the court was whether the courts of Georgia were required under the full faith and credit clause to give effect to New York statutes limiting provisions and representations involved in insurance contracts. The court said that it was required to; and the only language which can affect the instant case said:

> "The reasoning of the Georgia court, and the conclusion reached by it, are not sound. **No question of remedy is presented** . . . To sustain the defense involves merely recognition by the courts of Georgia that the parties have by their **contract** made in New York subjected themselves to certain conditions prescribed by its statute. Such recognition does not give to the New York statute extra-territorial effect." (Emphasis ours.)

So too, **Alaska Packers Association v. Industrial Accident Commission of the State of California,** 294 U. S. 532, 79 L. ed. 1044, 55 S. Ct. 518 (Petitioner's Brief, p. 33), is inapplicable. The petitioner cites that case as authority for the proposition that when the laws of two states conflict, this court will decide to what extent the law of the foreign state must be given full faith and credit. Actually, the case stands for the proposition, first, that full faith and credit was not denied to an Alaska Workmen's Compensation Act in refusing to allow it as a defense to a proceeding under the California Workmen's Compensation Act for injuries sustained in Alaska by one not a resident of California who entered into a contract in California to work in Alaska for a season of between two and three months at the conclusion of which he was to be returned to California and there receive his wages; and further that where the policy of a statute of the Forum comes into conflict with that of another state the conflict is to be resolved not by giving automatic effect to the full faith and credit clause, requiring the court of the Forum to subordinate its statutes to those of the other, but by appraising the governmental interests of each jurisdiction and turning the scale of decision according to their weight. Nor do we find any applicability in either **Pacific Insurance Company v. Industrial Accident Commission,** 306 U. S. 493, 83 L. ed. 940, 59 S. Ct. 629, or **Magnolia Petroleum Co. v. Hunt,** 320 U. S. 430, 88 L. ed. 149, 64 S. Ct. 208 (Petitioner's Brief, p. 33). In the **Pacific Insurance Company** case the question was whether or not the court of the Forum was required to apply and give full faith and credit to the Workmen's Compensation statutes of the place of the contract or whether it could apply the Workmen's Compensation Statute of the place of the Forum, which was also the place of the injury. The court held that it was free to apply the Workmen's Compensation Act of the Forum. In the Magnolia Petroleum Co. case the question was whether the full

faith and credit clause required Louisiana to recognize an award made under the Texas Workmen's Compensation Act so as to bar further action for the same injury under the Louisiana Workmen's Compensation law. The court held that the Texas award had the force and effect of a judgment and was res judicata and required recognition by the Louisiana court. It has no applicability to the instant case.

Petitioner cites three cases for the proposition that if the decision of the Missouri courts in erroneous, then such courts have refused to give petitioner the equal protection of its laws and denied to petitioner privileges extended to Oklahoma contrary to the provisions of the Fourteenth Amendment. These cases are **Kentucky Finance Corporation v. Paramount Auto Exchange Corp.**, 262 U. S. 544, 67 L. ed. 1112, 43 S. Ct. 636; **Lawrence v. State Tax Commission**, 286 U. S. 276, 76 L. ed. 1102, 52 S. Ct. 556, and **McKnett v. St. Louis and San Francisco Railway Co.**, 292 U. S. 230, 78 L. ed. 1227, 54 S. Ct. 690 (Petitioner's Brief, p. 34). None of these cases stands for this proposition. The Kentucky Finance case holds that foreign corporations must be accorded the same procedural protection as citizens of the Forum, but there was nothing in any wise comparable to the situation in the instant case. The Lawrence case held that a state may tax a citizen of the state on income derived wholly from activities carried on outside the state. The McKnett case held that a state court could not deny jurisdiction solely because of the source of the law sought to be enforced—in that case, the Federal Employers' Liability Act. The only significant language which we found in the case is as follows:

> "Alabama has granted to its circuit courts general jurisdiction of the class of actions to which that here brought belongs, in cases between litigants situated like those in the case at bar. The court would have had jurisdiction of the cause between these parties if

> the accident had occurred in Alabama. It would have had jurisdiction although the accident occurred in Tennessee, if the defendant had been a domestic corporation. It would have had jurisdiction, although the defendant was a foreign corporation, the plaintiff a nonresident, and the accident occurred in Tennessee, if the suit had been brought for an injury suffered while engaged in intrastate commerce. Thus, the ordinary jurisdiction of the Alabama circuit court is appropriate to enforce the right against this defendant conferred upon the plaintiff by the Federal Employers' Liability Act. And its jurisdiction was invoked according to the rules of procedure prevailing in that court." 292 U. S. 230, 232, 78 L. ed. 1227, 1229.

In other words, the court there found that the Alabama court was a court having general jurisdiction over this class of actions, which is certainly not the case here. Even petitioner would not claim that Missouri circuit courts have the powers granted to California Superior Courts by the California Inheritance Tax Statutes.

CONCLUSION.

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

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